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THE RIGHT TO DEVELOPMENT

INDIGENOUS ISSUES

**Written statement* submitted by the Indian Movement "Tupaj Amaru",
a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[12 January 2001]

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* This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

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THE RIGHT TO DEVELOPMENT AND PERMANENT SOVEREIGNTY OVER RESOURCES

(under items 7 and 15)

I. BACKGROUND AND CONCEPT

1. Within the context of the "new international economic order", in which relations between production and consumption are based on an ultraliberal ideology, the supposed right to development is increasingly unjust, unequal and anarchic, while economic rights to the enjoyment of natural resources are increasingly restricted, limited and confined by the blind laws of the market economy.

2. In the view of indigenous peoples, the notion of permanent sovereignty over natural resources must be understood in the historic process of economic and social development as a dialectical, political concept and a source of law whose aim is the equitable distribution of wealth to ensure the survival of humanity.

3. In the light of the legal and political definitions attributed to this universal concept, sovereignty is an inalienable right which resides in the nation, that is, in the sovereign will of every collective and indivisible entity, considered as the concrete totality of society in which each individual holds or should hold a small fraction of that will.

4. It is hardly surprising that the right to the enjoyment of the wealth and natural resources that Mother Earth offers us so generously has become one of the most controversial concepts in the whole history of the class struggle, one of the most polemical themes of political doctrine and one of the most sensitive issues in the process of the globalization of wealth on the one hand and poverty on the other.

5. Countless books have been written about the interpretation and application of the principle of sovereignty; resounding resolutions have been proclaimed and demagogic speeches uttered, which in the end have merely added more confusion to its real political content and its historical nature in the trend towards the accumulation of transnational capital.

6. In the history of modern society, based on the struggle between colonizers and colonized, the rich and the poor, the powerful and the hungry, the ruling classes have been usurping sovereignty to the detriment of the popular will. Meanwhile the State, derived from the contradictions of economic and social development at a particular stage of history, has been gradually detaching itself from society, placing itself above the latter and becoming an instrument in the hands of globalization actors.

7. Nevertheless, now as in the past, an ardent desire has been growing to put an end to colonialism and neocolonialism, the causes of underdevelopment, the plundering of natural resources, the scourge of racial discrimination and extreme poverty. The break-up of the colonial system and the rise of sweeping movements of national liberation in the colonies and dependent countries have taught us that oppression and slavery could not last for ever, nor could history be stopped by obscure market forces.

8. Stricken in its own conscience and overtaken by social upheavals in defence of human dignity and liberty, the international community of States acknowledged belatedly the need to recognize the right of peoples to sovereign development entitling them to the free enjoyment of their material and spiritual heritage.

9. The legitimate aspirations for which the colonized and vanquished peoples fought found expression, perhaps for the first time, in resolutions 626 (VII) of 21 December 1952 and 513 (VI) of 12 January 1952, adopted by the General Assembly, which recognize "that the underdeveloped countries have the right to determine freely the use of their natural resources".

10. But the countries freed from the colonial yoke soon realized that the concession of independence to colonial countries was not sufficient to lead them to self-determination, if the western Powers refused to recognize their full political sovereignty and economic independence, which were basic requirements for the effective enjoyment of resources stored in their ancestral lands.

11. Fundamentally, permanent sovereignty over natural resources constitutes the keystone of the right to free self-determination, by virtue of which all peoples are fully entitled freely to dispose of their natural wealth and resources. Over time, this universal principle has found expression in a number of binding rules and jus cogens of international law, as a permanent principle placed above the will of States.

II. PERMANENT SOVEREIGNTY IN INTERNATIONAL LAW

12. The achievements of the long struggles that the colonized peoples waged down the centuries to defend the dignity and worth of the human person became enshrined in several international instruments, especially in articles 1 and 55 of the Charter of the United Nations, and in many resolutions of the General Assembly and the Commission on Human Rights.

13. In its resolution 1314 (XIII) of 12 December 1958, the General Assembly set up a Commission "ad tempus" to conduct a full survey of the legal status and economic scope of the permanent sovereignty over natural resources, considered as a basic constituent of the right to self-determination.

14. The recognition by the international community of the full political sovereignty and economic independence of countries and peoples which had been under colonial rule and others succumbing slowly to neocolonial oppression, as well as the prohibition of any direct or indirect act impairing the exercise thereof, is expressed in resolution 1803 (XVII), adopted by the General Assembly on 14 December 1962 under the title "Permanent sovereignty over natural resources".

15. For the effects of this historical resolution, which serves as a reference in the field of economic and social rights, "the right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people". In practice, neo-liberal dogma has imposed on third world countries an absurd model of development, which is contrary to the national interest and well-being of peoples.

16. In the terms of the growing flow of direct foreign investment, the resolution stipulates that "the import of the foreign capital required for these purposes should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities".

17. In cases where authorization is granted, "the capital imported and the earnings on that capital shall be governed by the national legislation in force and by international law. The profits derived must be shared ... between the investors and the recipient State, due care being taken to ensure that there is no impairment, for any reason, of that State's sovereignty over its natural wealth and resources". These provisions have become obsolete to the extent that transnational companies unlawfully appropriated resources which were considered basic and strategic for the development of the western world.

18. In addition, the United Nations General Assembly, in its resolutions 3016 (XXVII) of 18 December 1972 and 3171 (XXVIII) of 17 December 1973, again reaffirmed "the inalienable rights of States to permanent sovereignty over all their natural resources, on land within their international boundaries as well as those in the seabed and the subsoil thereof within their national jurisdiction".

III. NATIONALIZATION - THE EXPRESSION OF SOVEREIGNTY

19. The right to full permanent sovereignty over natural resources and their exploitation was expressed in resolution 3201 (S VI), dated 1 May 1974, entitled "Declaration on the establishment of a new international economic order". Stressing the need to safeguard renewable and non-renewable resources, the General Assembly proclaims that "each State is entitled to exercise effective control over them and their exploitation with means suitable to its own situation, including the right to nationalization".

20. For the first time, this resolution raised the issue of the restitution of unlawfully acquired goods by recognizing "the right of all States, territories and peoples under foreign occupation, alien and colonial domination (the case of the indigenous peoples) to restitution and full compensation for the exploitation and depletion of, and damages to, the natural resources".

21. General Assembly resolution 3281 of 12 December 1974, entitled "Charter of Economic Rights and Duties of States", meanwhile raises one of the inescapable issues of globalization, namely the elaboration of a code of conduct for transnational corporations.

22. The resolution provides that each State has the right:

(a) "To regulate and exercise authority over foreign investment within its national jurisdiction in accordance with its laws and regulations and in conformity with its national objectives and priorities. No State shall be compelled to grant preferential treatment to foreign investment";

(b) "To regulate and supervise the activities of transnational corporations within its national jurisdiction and take measures to ensure that such activities comply with its laws, rules and regulations and conform with its economic and social policies";

(c) "Transnational corporations shall not intervene in the internal affairs of a host State. Every State should, with full regard for its sovereign rights, cooperate with other States in the exercise of the right set forth in this subparagraph".

23. In this sense, nationalization or the expropriation of foreign investments is derived from instruments recognized by the international community and constitutes the live expression of the sovereignty of peoples.

For the effects of resolution 1803 referred to above, "nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interests, both domestic and foreign".

24. "In such cases the owner shall be paid appropriate compensation, in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law. In any case where the question of compensation gives rise to a controversy, the national jurisdiction of the State taking such measures shall be exhausted. However, upon agreement by sovereign States and other parties concerned, settlement of the dispute should be made through arbitration or international adjudication".

25. For its part, resolution 3171 (XXVIII) plainly establishes the principle of nationalization by States hosting foreign investments, as an expression of the sovereign will of peoples to safeguard their natural resources. That implies that "each State is entitled to determine the amount of possible compensation and the mode of payment". It may be noted that, in defiance of those principles and rules of conduct, the States that claim to come out in defence of sovereignty merely hand over the cultural assets and wealth belonging to aboriginal peoples to the voracity of transnational corporations.

26. As we have seen, a number of resolutions prohibit coercion in the expropriation of usurped heritage. In its resolution 2626 (XXV) of 24 October 1970, the General Assembly strongly condemns the acts of States (military Powers) which use force, armed aggression, economic coercion or any other illegal means of resolving disputes relating to the exercise of sovereign rights.

27. In the concrete case of an embargo or blockade, the coercive measures or rules used by States directly or indirectly to coerce other States or peoples with the aim of altering their internal structure or in the exercise of their sovereign rights over their natural resources, constitute a gross violation of the Charter and Declaration on the Relations of Friendship and Cooperation Between States.

28. We should also mention resolution 3201 (S VI) which appeals to the collective conscience by urging that no State may be subjected to any type of economic, political or any other coercion impairing the free and full exercise of this inalienable right. In legal terms, this means that any direct intervention, subversion or plundering of peoples, especially of the lands, territories or natural resources of indigenous peoples, are acts considered unlawful and therefore opposed to the binding rules of international law.